United Nations A/C.3/64/SR.23

General Assembly
Sixty-fourth session

Official Records

Distr.: General
25 November 2009

Original: English

Third Committee

Summary record of the 23rd meeting
Held at Headquarters, New York, on Wednesday, 21 October, at 3 p.m.

Chairperson: Mr. Penke ..... (Latvia)
later: Mr. Pérez (Vice-Chairperson) ..... (Peru)

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The meeting was called to order at 3.05 p.m.

Agenda item 69: Promotion and protection of human rights (*continued*) (A/64/81)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/64/159, 160, 170, 171, 175, 181, 186, 187, 188, 209, 211 and Corr.1, 213 and Corr.1, 214, 216, 219, 226, 255, 256, 265, 272, 273, 279, 289, 290, 293, 304, 320 and 333)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/64/224, 318, 319, 328, 334 and 357)

1. **Mr. El Jamri** (Chairperson, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had entered into force on 1 July 2003 and, to date, had been ratified by 42 States. The Committee on Migrant Workers had been established in March 2004. As of January 2010, the number of members would increase from 10 to 14.

2. Some 200 million individuals lived in a State of which they were not citizens or in which they were not born. Only 10 to 15 per cent of those were undocumented or in an irregular situation. Migrant workers were often seen as a source of cheap and flexible labour, and were obliged to accept working conditions which locals rejected. The Convention provided a valuable legal framework for the protection of the rights of all migrant workers, whether in a regular or irregular situation. It promoted the establishment of harmonious relations between regions and States parties, and indeed within the societies in which migrant workers lived. The distinction between documented and undocumented migrant workers ran through the Convention, which was intended to support efforts to combat irregular migration. Clandestine migrants were vulnerable to human trafficking and were a source of unfair competition.

3. The Committee on Migrant Workers had considered the initial reports of 12 States parties and had identified some frequent areas of concern. In many cases, there was a need for legislative reform in order to ensure compliance with the Convention. It was important to collect data migration policies and to organize training courses for all officials active in that area. The right to effective remedy should not be curtailed, including for undocumented migrant workers. Many migrant workers faced obstacles to the enjoyment of the right to freedom of association, and in particular the right to join and found a trade union. The Committee had organized a panel on the topic on the occasion of the 2009 International Labour Day, thereby drawing attention to the relevant international standards and the experiences of unionized migrant workers.

4. On 14 October 2009, the Committee had held a Day of General Discussion on Migrant Domestic Workers in Geneva. One objective of the event was to assist in the formulation of a general comment on the situation of migrant domestic workers, which the Committee hoped to adopt in 2010. The event had also allowed the Committee to gather information for a debate at the 99th session of the International Labour Conference to be held in 2010, which would consider the adoption of a new international instrument on domestic migrant workers.

5. Recent resolutions of the General Assembly and the Human Rights Council had drawn attention to the rights of migrant workers in detention. He had represented the Committee at a panel convened at the 12th session of the Council, which had identified a number of good practices and alternatives to detention. The Committee had participated in an international meeting on the subject in September 2008. In the same year, the Committee had attended conferences on migration at the Inter-Parliamentary Union and the African Parliamentary Union, in addition to a regional conference in West Africa. An event had been organized to celebrate the fifth anniversary of the establishment of the Committee.

6. There was growing international consensus on the rights of migrant workers. Although ratifications were gathering pace, the limited number of States parties was a significant challenge for the Committee. Moreover, only 14 national reports had been received to date; 25 were outstanding, often by over five years. The Committee was considering the possibility of examining the implementation of the Convention without a national report, a strategy that had already been adopted by other treaty bodies.

7. He called on all States that had not yet done so to ratify the Convention. Research showed that the

protection of migrant workers strengthened national productivity. It was in the interests of all States to formulate standards and policies towards that end. Economic crisis had a disproportionate effect on migrant workers, and often brought about a rise in xenophobia and discrimination. Yet national legislation often did not offer sufficient protection to non-nationals. The Convention contained a detailed legal framework which provided guidance on how general human rights standards applied to migrants.

8. The consolidation of the rights of migrant workers was the best way to combat illegal migration and human trafficking. The Convention helped ensure that migrant workers could enjoy their fundamental rights. It was also an instrument of social cohesion: it conveyed a message of tolerance, and gave a clear signal that all persons deserved respect. The Committee was available to assist States that wished to ratify the Convention and was ready to provide guidance to all States regarding its implementation.

9. **Ms. Banzon-Abalos** (Philippines) asked what had prompted the organization of the Day of General Discussion on Migrant Domestic Workers, and what fundamental findings had emerged. With reference to the panel on the detention of migrants which had been held at the 12th session of the Human Rights Council, she wondered whether the Committee had begun to form any views on the detention of migrants, and what the possible alternatives to current practices were.

10. **Mr. El Jamri** (Chairperson, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that he appreciated the role of the Philippines in promoting the Convention. The Day of General Discussion had been aimed at developing a new international instrument on the protection of domestic workers, possibly a convention. He hoped that it would be adopted in 2010 and enter into force the following year. The work of the Committee centred on three main components: the evaluation of country reports, the promotion of the rights of migrant workers and discussion of the issues at hand. Each session therefore included some time for an exchange of views. The Convention had implications for the issue of migrant domestic workers; it remained to highlight and clarify the relevant provisions. The recommendations included the need to raise awareness and provide teaching and teaching tools in order to foster understanding of the existing framework.

11. The Convention contained several articles on the custody or detention of migrant workers. Migration should not be criminalized, as had recently been done in developed States such as Italy. A clear distinction should be made between individuals detained on migration and common criminals. Migrant workers had a right to appeal and to contact their consulate. It was important for the international community to work together: the means to implement recommendations were often lacking.

12. **Mr. Mamdouhi** (Islamic Republic of Iran) asked whether the Chairperson of the Committee on Migrant Workers could provide further details on the issue of xenophobic attacks and racial discrimination against migrants.

13. **Mr. El Jamri** (Chairperson, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that the Convention prohibited xenophobic attacks and called upon States to ensure equality of treatment, including with regard to school attendance and religious and cultural practices.

14. However, the economic crisis had brought to light several cases of discrimination. Although migrant labour had originally been invited to the host countries, the idea of national preference was now returning not only in Government policies but also in trade unions. He called on States to take action against such measures and to prevent xenophobic attacks. Host States and States of origin should formulate plans to integrate migrant workers and to facilitate their return and reintegration.

15. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that his report (A/64/272) addressed the critical role of informed consent in relation to the enjoyment of the right to health. It discussed the human rights basis of informed consent in clinical practice, public health and medical research. Supportive measures needed to be in place in order to respect the legal capacity of each individual to provide consent. The process must be free from coercion, undue influence or misrepresentation. The report drew particular attention to the obligation placed on Governments, and ultimately on health-care providers, to ensure that all individuals enjoyed the services, support and enabling environment to exercise

consent. Those services should be available, accessible, acceptable and of good quality.

16. Although informed consent might be enshrined in national legal framework, it often continued to be compromised. That was a result of the power imbalance created by the trust and unequal levels of knowledge and experience which were inherent in the doctor-patient and researcher-subject relationship. Structural inequalities exacerbated by stigma and discrimination resulted in certain groups becoming disproportionately vulnerable. The report discussed the causes of that vulnerability and the resulting violations faced by women, children, the elderly, ethnic minorities, indigenous peoples, persons with disabilities, persons living with HIV/AIDS, persons deprived of liberty and drug users. Those individuals and their support networks and representative organizations should always be meaningfully involved in the planning and delivery of services.

17. Many States continued to allow the non-consensual detention of persons living with mental disabilities, who were perceived as a danger to themselves and incapable of making decisions. The Convention on the Rights of Persons with Disabilities stated that the existence of a disability did not justify any deprivation of liberty, including the denial of informed consent. States had an obligation to provide any appropriate support for persons with disabilities to exercise their legal capacity to the greatest possible extent. Drug dependence should be treated like any other condition; criminalizing such behaviour was counterproductive.

18. Medical research should not compromise the autonomy of potential participants. Each potential subject should be adequately informed of the aims, methods, anticipated benefits and potential risks. Additional efforts were needed for patients with low levels of literacy or from vulnerable communities. Potential subjects must be the primary beneficiaries of medical research. Incentives and double standards for informed consent posed a particular risk, especially when unsafe trials were conducted in developing countries.

19. He strongly encouraged States parties to critically evaluate their own compliance with their obligations. They should address implementation barriers at the community level and those entrenched in social and cultural norms and practices. Proper counselling and comprehensive support services could help ensure confidentiality and informed consent. There should be appropriate channels of communication, staff training, awareness-raising, community involvement, and action to confront the structural causes of stigma and discrimination.

20. Donor Governments and institutions had an important role to play in ensuring informed consent across the health-care continuum. Informed consent should be a requirement for any policy guiding the distribution of funding and technical assistance. Monitoring mechanisms needed to be established in order to identify situations compromising informed consent. Mechanisms for redress should be made available at the local, regional and international levels to ensure that those whose actions threatened human dignity and autonomy were held accountable.

21. **Ms. Ellis** (Australia) said that she looked forward to the Special Rapporteur's forthcoming visit to her country. She asked whether there was a best practice for States to ensure protection of the right to health when responding to a pandemic and also requested further comments on the relation between poverty alleviation and health outcomes, in particular with regard to HIV/AIDS. Her delegation wondered if there were any successful models in that regard that could be drawn to the attention of States parties.

22. **Ms. Sapag** (Chile), drawing attention to the reference to her country in note 117 of the report (A/64/272), said that the issue had been referred to the Ministry of Health as a matter of the utmost priority. Chile was establishing a mechanism for the protection of older persons, a topic referred to in paragraph 50 of the report. She asked if the Special Rapporteur could comment further on the legal capacity of older persons to exercise the right to informed consent.

23. Several resolutions discussed by the Committee had tackled the relation between informed consent and confidentiality. She asked if the Special Rapporteur could make any further comments on the topic. The Political Declaration on HIV/AIDS contained in General Assembly resolution 60/252 contained a specific provision on the topic. However, the concept of confidentiality had not been defined by special mechanisms, or indeed in the relevant documents. She asked if the Special Rapporteur could comment on the relation between informed consent and confidentiality. Lastly, her delegation appreciated the recommendations

contained in paragraph 95 of the report and hoped that States would be able to implement them effectively.

24. **Mr. Bennwick** (Sweden), speaking also on behalf of the European Union, asked whether the Special Rapporteur felt that health-care professionals broadly recognized the importance of the rights-based approach and of informed consent. He wished to know what could be done to raise awareness of the importance of respecting, promoting and fulfilling that fundamental aspect of the right to health.

25. The report identified a number of vulnerable groups that required special protection. His delegation wished to know what specific actions could constitute best practices to overcome the implementation barriers confronting those groups. Lastly, the report stated that mechanisms for monitoring and redress should be made available to ensure that those whose actions threatened human dignity were held accountable. He wondered whether the Special Rapporteur could comment further on the nature of those mechanisms.

26. **Ms. Acosta Hernández** (Cuba) said that her country had worked intensively to guarantee free and universal health care. Thousands of Cuban health professionals were active all around the world. Cuban educational facilities helped foster cooperation on health issues. She asked whether the Special Rapporteur could give any examples of South-South cooperation that fostered the right to health. With regard to the training of health-care professionals, she wondered whether the Special Rapporteur could comment on the effects of the brain drain on developing States.

27. **Ms. Nelson** (Canada) said that her delegation appreciated the report's recognition of the principles of the Convention on the Rights of the Child, the importance of a rights-based approach, and the provision of child-friendly, age-accessible services. The emphasis on counselling and treatment for groups that suffered from social stigma, such as persons living with HIV/AIDS, was also welcome. She asked whether the Special Rapporteur could give examples of public health systems that had integrated a rights-based approach and what the outcomes had been.

28. *Mr. Pérez (Peru), Vice-Chairman, took the Chair.*

29. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that his work within the context of the mandate had not examined the question of poverty alleviation and HIV/AIDS. It was, however, a very important issue. Poverty resulted in a lack of information on the available health services. It was essential to disseminate such information.

30. Responding to comments made by the representatives of Australia and Canada, he said that a community-based and rights-based approach had been used in India, South Africa and other States to encourage condom use among sex workers, thereby preventing the spread of HIV and other sexually transmitted diseases. In India, communities had worked intensively in 1992 to promote the civil rights of sex workers, including freedom from arrest and access to schooling for their children. Condom use had risen from 3 to 90 per cent, while sexually transmitted diseases had been reduced from 25 to 1 per cent. The medical journal *The Lancet* had verified those results in other regions of India in 2007. Similar models had been applied to tuberculosis. Open, ventilated hospitals together with community-based education on how to avoid spreading the disease had proved more effective than closed hospitals.

31. Responding to the comments made by the representative of Chile, he said that older persons were often neglected and treated as though they had no capacity to make decisions. The Convention on the Rights of Persons with Disabilities had helped to bring about a paradigm shift. It was important not only to ensure the right to decide, but also to allow time and provide counselling.

32. Responding to the comments made by the representative of Sweden on behalf of the European Union, he said that legal mechanisms existed in much of the developed world. However, cases rarely came to court, and many patients were ill-informed about medical procedures. In the developing world, there was often not even a modicum of informed consent, whatever the standard of the hospital. Health-care providers should be made aware that better information led to better outcomes. There were no clear-cut good practices, but some good examples could be given. For example, HIV-positive persons who had reliable information about their disease were better able to face the situation and raise any problems with doctors.

33. He greatly admired Cuba's health-care policies and its international cooperation on health issues. The

brain drain was a significant challenge in all sectors. In India, many emigrants had returned as a result of the recession. However, the problem remained a serious one.

34. **Mr. Vigny** (Switzerland) asked which actors were best equipped to give preventive information to vulnerable people and, in particular, what roles schools could play in that process.

35. **Mr. Tan** Li Lung (Malaysia) said that it was vital for Governments to ensure that the population had control over their health. He wished to know how the protection of the right to informed consent could reinforce poverty reduction strategies, a question which he felt had not received due attention. The international dimension was also comparatively neglected. The international community could assist developing countries in promoting the right to health, including through capacity-building and financial and technical support. Timely access to vaccines, medicine and the sharing of the benefits all needed to be addressed. He asked what efforts had been made in that direction. Lastly, the concept of the "highest attainable standard" of health had often been used as a pretext to limit the provision of health care to countries and individuals. He wondered whether the Special Rapporteur could comment on that argument.

36. **Mr. Ndimeni** (South Africa) said that his delegation appreciated the cross-cutting nature of the report and welcomed the adoption of the Human Rights Council resolution 12/24 on access to medicine, which had been sponsored by Brazil. He asked whether the Special Rapporteur was aware of General Assembly agenda item 123 entitled "Global health and foreign policy", which had recently been introduced at the request of several States including South Africa. The report under that item (A/64/365) pointed out that health care was increasingly affected by non-health issues such as climate change and trade.

37. **Mr. Aguiar Patriota** (Brazil) said that, in his own work, he had addressed the issue of Brazilian nationals taking part in research commissioned by a more powerful partner from the developed world. Participants from underprivileged segments of society were attracted by the possibility of free treatment or other benefits, but were not empowered to make an informed decision.

38. The relationship between local researchers and their foreign partners was asymmetric. Local researchers were often drawn away from other tasks that were more important for their home country. The research had a predatory nature in that developed States acquired large volumes of information on issues that were under-researched in the developing world. The data often left the country and were not disclosed. The developing State would then have to pay dearly for the medicines arising from the research. The foreign partner was seldom accountable for any negative consequences.

39. Ensuring the right to informed consent also meant empowering patients. There were several difficulties in that connection. Informed consent depended on the quality of information available. The role of States was to provide fair information to the vulnerable and least educated categories. Patients were often unaware of cheaper alternatives to trademark medicines; campaigns often compared those generic alternatives to counterfeit medicine. Many doctors refused to release data for a second opinion. The adoption of Human Rights Council resolution 12/42 was a welcome step in ensuring access to medicine.

40. **Ms. Ahuja** (India) said that she appreciated the Special Rapporteur's reference to community-based approaches in India. The question of informed consent in drug trials was of particular importance to developing States, where consent was influenced by other factors such as illiteracy and poverty. She asked how one might strike a balance between those factors.

41. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), responding to the comments made by the representatives of Switzerland and India, said that counselling was of paramount importance in providing preventive information. In a clinical trial setting, time was of the essence. He had personal experience of antiretroviral drug trials in India which had balanced all of the factors successfully. One guideline was that money should not change hands.

42. More generally, counselling was a long-term investment. It was best conducted by trained members of the community, such as peer educators in the case of sex workers and persons living with HIV/AIDS. However, legal mechanisms often were not in place to control clinical trials. In India, the legislation was only recent. The mechanisms must be mandatory, and the releasing of data must be regulated. The representative

of South Africa had drawn attention to the valuable report contained in document A/64/365. The representative of Malaysia had referred to the relation between poverty reduction and health outcomes. He had not yet addressed that challenging issue, but would do so more fully in future and looked forward to cooperating with the delegations concerned. He was aware of Human Rights Council resolution 12/24 and would take it into account.

43. Cooperation in technical and financial assistance was most often one-sided and unequal. However, a good example was the Global Fund to Fight AIDS, Tuberculosis and Malaria, which was based not on international policies, but rather on Governments and civil societies. Those issues would receive more attention in his future work, as would the interrelation between health and non-health issues. The concept of the highest attainable standard of health had been misunderstood, including by academics and experts. An article in the *Financial Times* on 12 October 2009 had attempted to debunk that right. He felt, with all due respect to the delegation of the United States of America, that such a view was specific to the United States. The right to the highest attainable standard of health meant finding a fair and equitable way to distribute resources.

44. One provocative idea, which he had discussed privately before, was that States such as India, Brazil and South Africa could form their own cartel to buy medicines together, something that would rapidly bring down prices. The representative of Brazil had raised some extremely valid concerns, which required legislation and international cooperation. Middle-ranking countries could help less developed countries in that regard. The issue of confidentiality was also very little understood around the world. It was, however, an issue of public interest, and could be outweighed only on grounds of public interest.

45. **Ms. Sicade** (United States of America) said that her Government was seeking to provide affordable and accessible health care for all people. There was sometimes a misperception that her country was opposed to such things as the right to health care.

46. **Mr. De Schutter** (Special Rapporteur on the right to food) said that, paradoxically, the world produced more food than ever before yet more people than ever before were hungry. For too many years the international community had focused on increasing food availability while neglecting the effects of production methods and their long-term environmental impacts. Yields had increased remarkably but yield increases alone, while necessary for alleviating hunger and malnutrition, could not eliminate hunger.

47. His work had focused on how to help the poor have access to food, where food availability was sufficient, and he had increasingly come to realize that, in addition to availability and access, sustainability of food production must become a central concern in the strategies developed to realize the right to food. Current forms of agricultural production had significantly contributed to climate change, which represented a major threat to food production. Furthermore, about 75 per cent of plant genetic diversity had been lost as farmers worldwide abandoned local varieties for genetically uniform varieties that produced higher yields under certain conditions but were more vulnerable to weather-related events and to pests or disease.

48. His report in document A/64/170 described the seed policies developed by States with a view to ascertaining which policies were best suited to the complex challenge of improving yields, increasing the incomes of the poorest farmers working in the most difficult environments, developing food systems that would be more resilient to climate change and stemming the loss of crop genetic diversity. Since the global food crisis of 2007-2008, many countries had sought to support food production by providing farmers with better access to seeds. But Government resources were limited, and Governments were faced with two seed systems: the commercial seed system using uniform and stable varieties that could be certified and catalogued, and the informal or farmers' seed systems based on the exchange or trade of local varieties, or landraces. He wished to underscore that access and innovation should be encouraged in both systems, each of which had specific functions and corresponded to different needs.

49. In the commercial seed system, new varieties were proposed to farmers at increasingly subsidized prices. Those varieties could produce high yields under appropriate conditions or be bred for specific characteristics. However, the expansion in the use of such varieties accelerated the loss of agricultural biodiversity. Too often breeding efforts were directed towards a silver bullet solution, such as high-productivity maize or a disease-resistant rice, which

did not address the many needs of farmers, who were rarely consulted. In addition, the seed sector was concentrated in the hands of a limited number of Northern firms, which reaped a disproportionate portion of the final value of the crop. Farmers became increasingly dependent on their products unless antitrust legislation was used to tackle that concentration.

50. He therefore advocated supporting the efforts by developing countries to establish a regime for the protection of intellectual property rights adapted to their development needs, as authorized under article 27, paragraph 3 (b), of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Those countries should not be subject to TRIPS-plus provisions in free-trade arrangements, but should instead be provided with technical assistance, including from the International Union for the Protection of New Varieties of Plants (UPOV) and the World Intellectual Property Organization (WIPO), for the adoption of systems for the protection of plant varieties.

51. Excessive protection of intellectual property rights in agriculture increasingly posed an obstacle to the very innovation that protection was meant to encourage since ongoing research required permission to use past innovations. In addition, promoting innovation through intellectual property rights skewed research and development towards meeting the needs of farmers in rich countries, while the needs of poor farmers in developing countries were relatively neglected. That trend must be reversed; the resources allocated to public agricultural research should be increased, and new incentives should be offered to the private sector with a view to encouraging research into the crops that most benefited poor farmers in developing countries.

52. Turning to the farmers' seed systems, he said that in most developing countries the vast majority of farmers still depended on such systems, in which varieties bred and selected by farmers were exchanged or traded. Those varieties were often best suited to the local agro-environmental conditions and there were no restrictions on the reuse of seeds because there were no intellectual property rights restrictions. The genetic diversity within the seeds provided a source of resilience against certain attacks from nature. Poor farmers depended on those systems, but so did professional plant breeders and seed companies, which relied on the development of those plant resources for their own innovations. Those systems must therefore be better supported, and innovation within them encouraged. Initiatives favouring the development of local seed exchanges should be scaled up, for example through the use of community seed banks and seed fairs.

53. States had put much more effort into seeking to promote innovation in the commercial seed system rather than the farmers' seed systems. Full implementation of farmers' rights as stipulated under the International Treaty on Plant Genetic Resources for Food and Agriculture would contribute to restoring a balance that was currently in danger. While both systems through which seeds were developed, improved and distributed deserved support, small farmers should be given a real opportunity to choose. If they considered commercial varieties to be more suitable to the kind of farming that they wished to practise, they should have access to seeds at affordable prices and under conditions that did not result in dependency on firms whose economic power remained unchecked. If, however, they wished to maintain the practice of exchanging and trading seeds that they had improved in their own fields, they should be supported in doing so. For poor farmers at least, the right to food could be defined very simply as the ability to produce in viable conditions.

54. **Mr. Bennwik** (Sweden), speaking on behalf of the European Union, with regard to the need to develop new varieties of plants and also guarantee the active participation of farmers, in particular those in developing countries, in decisions related to the conservation of plant genetic resources, noted that valuable results had been obtained from participatory breeding, and asked why participatory methods were being adopted so slowly.

55. With regard to paragraph 42 of the report (A/64/170) and the key role played by women in traditional farmers' seed systems, he wondered whether the Special Rapporteur had assessed the impact of seed policies on women and whether he could identify concrete measures to overcome the obstacles that women faced in obtaining locally appropriate seeds. Referring to paragraph 43 and the need to protect farmers' rights, he asked what relationship there might be between that issue and the core principles and measures relating to large-scale land acquisitions and leases that the Special Rapporteur had submitted to the Human Rights Council at its 12th session. He

wondered if those principles might help States in their efforts to promote farmers' rights in the context of access to seeds.

56. **Ms. Pérez Álvarez** (Cuba) said that the right to food was of special concern to her delegation. She commended the Special Rapporteur for the quality of his report and for his close cooperation with the United Nations system, including the Human Rights Council, and echoed his concerns with regard to seed policy and the need to protect biodiversity. Her delegation would continue to support the work of the Special Rapporteur and she underscored the responsibility of the international community to do likewise and to work to resolve the food crisis and ensure full implementation of the right to food.

57. **Ms. Mc Breen** (Ireland) said that it was a failure on the part of the international community that more than one billion people currently went hungry in the world. That situation would further deteriorate due to climate change and the predicted increase in the world's population to 9 billion by 2050. She agreed with the Special Rapporteur's call for increased investment in agriculture, research and support for poor farmers, in particular women, and said that to that end her Government intended to increase its support for food security to 20 per cent of its assistance budget by 2012. The international community must redouble its efforts to promote appropriate crop yields, guarantee the livelihoods of vulnerable farmers and meet the food needs of populations, including the urban poor.

58. With regard to the need to increase public research programmes, she wondered what role such programmes, as well as regional policy frameworks, could play in promoting the right to adequate food. With respect to the need to provide incentives to the private sector for research into crops that would benefit poor farmers, including women, in developing countries, she asked whether the Special Rapporteur had any examples of best practices in that regard. Lastly, underscoring the importance of traditional knowledge and practices, she wondered if the Special Rapporteur could provide any additional examples of such practices, in particular with regard to the role played by traditional women.

59. **Mr. Aguiar Patriota** (Brazil) said that Brazil was a leader in efforts to promote the right to food. The right to food and the right to health had much in common. In both areas, there was concentration in the hands of a limited number of players and distortion of markets and barriers to access by the developing countries. Both areas were subject to intellectual property regimes. In the area of seed stocks, for example, farmers quickly became dependent on seeds provided from abroad that were sterile and therefore had to be repurchased every crop year.

60. His Government had made the right to food a priority and, taking into account the need to promote the interests of both small- and large-scale producers, had adopted a two-pronged approach, by establishing a ministry for small farmers as well as a ministry for the agro-business sector. Thanks to its policies, over the past 30 years Brazil had gone from being a net importer of food to a net exporter. He agreed with the Special Rapporteur on the need to promote investment in agricultural research and noted in that regard that his Government had established the Brazilian Agricultural Research Corporation (EMBRAPA). The international community must likewise devote more resources to agriculture, in particular in the developing countries, ensure liberal market systems and strengthen South-South cooperation. He also agreed with the Special Rapporteur that the developing countries should not be subject to TRIPS-plus restrictions in free-trade arrangements.

61. **Mr. Makong** (Lesotho) said that he shared the views of the Special Rapporteur on access, distribution and sustainability. He asked what specific policies might be implemented to balance the needs of the commercial and farmers' seed systems and how developing country farmers could be ensured the timely availability of seeds appropriate for their needs. He also wondered if the Special Rapporteur had any suggestions concerning the saving and securing of seed stocks and the capacity of vulnerable societies to respond to seed shortages, especially in the face of natural disasters. Many initiatives and procedures, for example harmonization of seed standards and regulations for the orderly movement of seed stocks, had been mentioned, and he asked whether the Special Rapporteur intended to study the effects of such measures on the right to food.

62. **Mr. De Schutter** (Special Rapporteur on the right to food), in response to the representative of Sweden, said that he welcomed the European Union's commitment to working with him. He underscored the need to make research more participatory and involve

farmers, the ultimate beneficiaries and users of new technologies and plant varieties, in defining research priorities. Furthermore, expensive high-tech initiatives were frequently of limited benefit. For example, a disease-resistant cassava had been developed without taking into account the real world situation, where the traditional variety could be left in the ground for long periods, eliminating the need for expensive storage facilities, but nevertheless providing farmers with a secure food reserve. The resistant variety, however, had to be harvested immediately. Participation guaranteed accountability and ensured the best results for the money invested. Small-scale, low-cost locally developed solutions could be just as beneficial for farmers and production. He cited the example of a Peruvian researcher who for $10,000 had improved the local okra crop using a very simple technique, benefiting millions of small farmers.

63. As for the impact of seed policies on women, he said that in many societies it was men who took decisions relating to agriculture. If men decided to buy new seeds rather than use traditional practices of exchange of seeds, the important role of women in selecting the best seed types would be reduced. With respect to the core principles relating to large-scale land acquisitions and leases, he said that the arrival of investors could be beneficial but the local communities must be involved in any investment or developments and should not be evicted from their lands. Their rights must be protected in accordance with the International Treaty on Plant Genetic Resources.

64. He informed the representative of Cuba that his next report, to the thirteenth session of the Human Rights Council, would focus on the role of transnational corporations and the private sector in general in the food production and distribution chain, including measures to tackle the problem of over-concentration. He expressed concern in that regard that, at the local level, small farmers had little choice in suppliers and buyers and paid retail prices to their suppliers but received only wholesale prices for their products.

65. Responding to the representative of Ireland, he stressed the need to avoid over-investment in single crops and encourage diversity in seed stocks, which had the added benefit of increasing resilience. Public research programmes were important because private research prioritized crops and seeds that were profitable for the research sponsors and were protected by intellectual property rights. Only approximately 6 per cent of private seed research was devoted to products that would increase the livelihood of poor or small-scale farmers, leading to a long list of orphan crops. Too much emphasis was likewise placed on seed and crop research, when the study and promotion of good practices in harvesting, management, water use etc. could also significantly increase yields without major investments in high-tech research.

66. The emphasis at the World Summit on Food Security in November that year should be on creating the right conditions for farmers to earn a decent living. Examples of good practices for involving farmers, including women, in defining priorities included efforts in India and Senegal to make intellectual property rights regimes more balanced than those usually forced on developing countries. He cited in that regard the use of community registers of farmers' varieties of plants in Senegal, which enhanced access by farmers to local seed resources.

67. He agreed with the concerns expressed by the representative of Brazil at the concentration of seed production and distribution in the food system. The emphasis on biotechnology and expensive research had led to greater consolidation and mergers as companies increased investments and tried to protect their patents and obtain access to other companies' patents. The increasing concentration of both seed production and distribution in the hands of a small number of companies was however a real problem and distorted markets.

68. **Mr. Méndez** (Argentina) underscored his delegation's support for efforts to alleviate food insecurity at the regional and international levels and to promote human rights in general. Such entities as the Food and Agriculture Organization of the United Nations and the World Trade Organization were more suitable forums than the Third Committee for multilateral discussions of the right to food and the promotion of development. He nevertheless asked for the Special Rapporteur's opinion on the clear effects of production distortions and protectionism on the part of the developed countries on increasing food insecurity and on the relation between protectionism, the financial crisis and the right to food.

69. *Mr. Penke (Latvia) resumed the Chair.*

70. **Mr. Tan** Li Lung (Malaysia) said that he agreed that more innovation was needed in both the

commercial and farmers' seed systems and requested more examples of best practices, for example the use of common seed banks. He also asked the Special Rapporteur to comment on the need for increased investment in the entire agricultural sector, not merely improved plants. According to the report, farmers were increasingly dependent on large companies' seeds, for which they had to pay high prices that were unaffordable for poor farmers. He wondered whether there were cases where large companies had made seeds available to farmers at low prices, creating a dependency that had negative consequences for biodiversity.

71. **Ms. Liu** Lingziao (China) commended the Special Rapporteur for his close cooperation with the Human Rights Council. She deplored the effects of the food crisis on the developing countries, in particular the least developed countries, and called on the developed countries to increase funding for capacity-building for food production in the developing countries. Her delegation agreed that research should be undertaken in cooperation with farmers, in particular poor farmers in the developing countries, and supported the Special Rapporteur's commitment to studying how to help poor farmers in the developing countries. More information was needed on the effect of the global food and economic crises on farmers in the developing countries and on the right to food. She asked whether those would be priorities in his future efforts and whether he would further strengthen his cooperation with the United Nations system.

72. **Mr. Sankurathripati** (World Intellectual Property Organization (WIPO)) said that WIPO supported the right to food and underscored that WIPO, in accordance with its mandate and in cooperation with the International Union for the Protection of New Varieties of Plants (UPOV), worked to protect the intellectual property rights relating to new seed varieties. He welcomed the cooperation between the Special Rapporteur, WIPO and UPOV.

73. With regard to paragraph 39 of the report of the Special Rapporteur (A/64/170), he stressed that the aim of the UPOV system was to encourage the development of new varieties of plants for the benefit of society, and not to reward and encourage standardization and homogeneity. With regard to innovation by farmers and the breeders' exemption in the International Convention for the Protection of New Varieties of Plants, he underscored that the purpose of breeding of new varieties was not subject to any restriction.

74. Turning to paragraph 40 of the report, and concerning breeders' rights and the farmers' seed system, he said that farmers required the consent of the breeder to sell protected varieties of seeds. Exceptions to breeders' rights were, however, allowed for private or non-commercial acts, freeing subsistence and poor farmers in developing countries from full application of breeders' rights. Those farmers could, therefore, benefit from the use of protected new varieties, including seeds saved by farmers.

75. **Mr. Geurts** (Observer for the European Commission) said that the Commission followed closely the work of the Special Rapporteur and stressed the importance of assisting the most vulnerable, those in developing countries especially, and guaranteeing access by farmers to seed varieties. With regard to intellectual property rights issues, he wondered how the need to encourage innovation in commercial research could be balanced with the need to facilitate access to plant genetic resources. He asked if the granting of intellectual property rights, for example breeders' rights by developing countries, would contribute to the realization of the right to food and requested examples of how intellectual property rights had limited farmers' rights to save, exchange or sell seeds.

76. **Ms. Sicade** (United States of America) said that her Government was committed to improving food security worldwide in accordance with the principles set out in the L'Aquila G-8 Joint Statement on Global Food Security and would allocate $20 billion to support sustainable agricultural development in developing countries over the next three years. It was also interested in the role that human rights norms might play in achieving those principles.

77. She agreed that there had been a strengthening of the international intellectual property regime as well as efforts to reaffirm the sovereignty of States over their genetic resources. Her delegation believed that a well-functioning intellectual property rights regime provided incentives to technology developers, encouraged the dissemination of technology and contributed to improved access to high-quality seeds for all farmers.

78. Her delegation believed that Governments should adopt strategies to promote public and private

investment and encourage productive collaboration to meet the needs of producers in developing countries, including small- and medium-sized farmers and women. Her Government undertook major investments to preserve agricultural biodiversity through its national plant germ plasm system and national genetic resources programme. Its national gene bank system freely distributed agricultural genetic materials worldwide.

79. **Ms. Taracena Secaira** (Guatemala) said that indigenous peoples traditionally played an important role in preserving biodiversity, transmitting seeds from generation to generation. The modern system of patent protections and buying of seed stocks seemed incompatible with that tradition. Recent droughts caused by climate change had destroyed crops and traditional seed stocks in Guatemala. She wondered how the traditional indigenous system for preserving and passing on seed stocks and the modern monopolistic patent-based system could be reconciled.

80. **Ms. Ratsifandrihamanana** (Food and Agriculture Organization of the United Nations (FAO)) stressed the urgency of meeting the needs of the vulnerable and eliminating hunger in the world, especially in the context of the current food crisis. Referring to the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the FAO Council in 2004, she said that FAO had just made available on its website a comprehensive Right to Food Methodological Toolbox. She welcomed the growing number of States that had formally recognized the right to food in their Constitutions.

81. The right to food had been integrated into the new FAO strategic framework, making implementation of the right to food an obligation for FAO member States. A World Summit on Food Security would be held in Rome from 16 to 18 November 2009 with a view to developing strategies for the elimination of hunger by 2025, strengthening coherence in international efforts to implement the right to food, increasing the income of farmers, restoring the share of official development assistance allocated to agriculture to the 1980 level of 17 per cent, and guaranteeing food safety and quality. Delegates would also endeavour to establish a mechanism for early reaction to food crises based on the early warning models that had worked so well in 2007.

82. **Mr. De Schutter** (Special Rapporteur on the right to food), in response to the representative of Argentina, said that the international trade regime had a negative effect on the developing countries' right to food. Access to developed country markets was distorted by barriers and subsidies that the developing countries could not match. Increased trade brought new challenges as well, which States should be prepared to face. Some large companies would benefit from increased trade but many would not and the gap between the two groups would be increasingly wide.

83. The benefits of increased trade in fact went largely to the major companies involved in buying and trading products, not the producers. Conditions must therefore be created so that the producers themselves shared in the benefits of trade. In the area of seed policy, the global supply chain often did not encourage diversity but rather uniformity, with producers purchasing uniform seed stocks from single breeders, thus reducing biodiversity.

84. Turning to the issues of institutional innovation and global monopolies raised by the representative of Malaysia, he said that innovation implied not just improving plants but also the entire system, including governance, delivery systems, and infrastructure, which could in themselves be much more effective in raising the incomes of farmers in developing countries at relatively low cost. With regard to global monopolies and the use of low-cost seeds that led farmers to abandon traditional varieties, he said that, in cases where Governments subsidized seed supplies from global suppliers, there was a risk that, if there came a time when the Government could no longer afford to subsidize those supplies, the farmers who had become dependent on the low-cost seeds would not be able to pay the full price of those seeds on their own. While subsidy programmes were well-intentioned and could be effective in the short term, he wondered if they were socially and environmentally sustainable in the long term.

85. With regard to the questions raised by the observer for the European Commission on how to balance innovation and access to the benefits of research for producers, through an appropriate intellectual property regime, he said that the needs of the most vulnerable should be taken into account by having them involved in defining the priorities for research. There must be increased investment in agricultural research but access to products developed

as a result must be facilitated; farmers must also be consulted so that research was aimed at meeting their needs. Perhaps intellectual property rights had likewise been strengthened too much, and, in the end, served as barriers to farmers who did not have access to credit, for example to buy seeds.

86. More public funds must likewise be invested in agricultural research. As an example of farmers' rights to save and exchange seeds being limited by the spread of uniform varieties, he cited the example of a group in France that had wanted to provide traditional varieties of seeds to interested farmers but had been sued by seed producers for unfair competition because the seeds in question were not listed in the official catalogue of seed types.

87. In response to the representative of China with regard to the effect of the economic crisis on farmers in the developing countries, he said that it was paradoxical that food prices were too frequently too low for producers but too high for consumers, with farmers squeezed out of a fair share of the profits from their crops and consumers not guaranteed access to affordable food. The issue was not one of high prices or low prices but how to ensure equitable distribution of the benefits of the food system.

88. Replying to the representative of WIPO, he said that, while intellectual property rights did encourage innovation for a small number of crops for which there was a profitable market, the intellectual property regime also encouraged homogeneity. It concentrated research on crops that had market value and lessened biodiversity, to the neglect of many other crops of great interest and usefulness to farmers. That underscored the need for more publicly funded research into crops that were of lesser interest to the major international companies.

89. With regard to breeders' rights, he referred the Committee to paragraph 29 of his report (A/64/170) and stressed that the central question was who benefited or lost as a result of intellectual property protections. The FAO Voluntary Guidelines on the right to food encouraged States to promote research to assist small- and medium-scale farmers with a view to promoting food security. His concern was that that research was not occurring and that the innovation and research that was undertaken did not take into account the needs of those farmers.

90. Turning to the question raised by the representative of Guatemala, he said that he had underscored the importance of traditional agricultural knowledge and practices and their contribution to biodiversity in his report. Lastly, he stressed the importance of his close cooperation with the FAO Committee on World Food Security with a view to developing a global strategic framework for food security to hold States accountable for their efforts to promote food security, which he regarded as the most important achievement of his mandate.

The meeting rose at 6 p.m.